

3:06 CV 60-T

RECEIVED

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

2006 JAN 23

United States District Court		District <u>Middle District of Alabama</u>	
Name of Movant <u>Wendall Jefferson</u>	Prisoner No. <u>11199-002</u>	Case No. <u>03-00063</u>	
Place of Confinement <u>Beaumont, United States Penitentiary</u>			
UNITED STATES OF AMERICA		v. <u>Wendall Jefferson</u> (name under which convicted)	

MOTION

- Name and location of court which entered the judgment of conviction under attack United States District Court Middle District of Alabama, Montgomery, AL
- Date of judgment of conviction March 12, 2004
- Length of sentence 438 months
- Nature of offense involved (all counts) Count one and two. Felon in possession of a firearm. Count three and five possession with intent to distribute. Count four and six knowingly used, carried and possessed a firearm during in relation to and "in furtherance of a drug crime."
- What was your plea? (Check one)
 - Not guilty ☐
 - Guilty ☒
 - Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

- If you pleaded not guilty, what kind of trial did you have? (Check one)
 - Jury ☐
 - Judge only ☐
- Did you testify at the trial?
Yes ☐ No ☐
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐

AO 243 (Rev. 5/85)

9. If you did appeal, answer the following:

- (a) Name of court UNITED STATES
- (b) Result Affirmed
- (c) Date of result December 16, 2004

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

Ground one:Petitioner maintains his"actual innocence"under 18 U.S.C.924(c),that the courts misinformed him as to the elements of the offense.

Facts:Petitioner plead guilty to a six count indictment,count four and six charge him with 924(c).Petitioner contends that he did violate the statue nor the elements that are required of violating 924(c).The courts nor defendant counsel avised him of the nature of the offense under 924(c)that he isguilty of.

Ground two:Petitioner contends he did not violate any of the prongs under 18U.S.C.924(c)for"knowingly used,carried and possessed a firearm "during in relation to"and "in futherance of"a drug trafficking crime.

Facts:Weapons found at defendant wife place of business and residence he shared with her,along with drug proceeds and nothing more did not violate the elements under 18 U.S.C 924(c).The record is void of evidence that defendant handled the firearms or sold drugs from any of the locations.

Ground three:Petitioner cotends that count four and six of the indictment are duplicitious.

Facts:Count four and six of the indic tment alledge two different offense under the same subsection of the weapon statue 18 U.S.C.924(c) The "during in relation to"and"in futherance of"prongs requires two different kinds of conducts to be convicted of under the statue.

Ground four:Counsel rendered ineffective assistance for failure to research law before allowing defendant to plea.

facts: Defense counsel failure to research law before plea prejudi defendant to a fair trial and lesser including offense in which defendant would have received a leinted sentenced for his crime.

Ground Five:Petitioner contends that the district court erroneously convicted him under"Trace Amount"of cocaine as a felony offense under 21 U.S.C§841(a),which enhanced the predicated offense under 18 U.S.C.§924(c).

facts: Agents found 3baggies suspected of cocaine residue inside defendant wife place of business .The goverment used the trace amount of cocaine to enhance the predicate offense for the firearm Charge."Trace Amount"under 2D1.1 is not under the sentencing guidelines therefore it does not constitute a crime ,rather 2D2.1 applies to the defendant at bar for "simple possession under 21 U.S.C.§844(a)a misdeameaner;petitioner is not guilty of violating 21 U.S.C.§841(a).

Ground Six:The Goverment violated defendant SixthAmendment rights under the "Confrontation Clause"

Facts: At defendants Suppressing hearing on May 29,2003,agents testified that defendant wife stated"that bought the firearms for defendant drug dealing purposes".(Suppressing pg.)The statement later was used in defendants decision of his suppressing hearing, theCourt of appeals for the Eleventh Circuit used it in defendant decison brief.(pg4).Defendant n ever confronted the statedment made by officers because when defense attorney called defendants wife to testify at his his suppressing the prosecuting attorney testifed that should would bring charges up on defendant wife if she testifes,see suppressing hearing pg.

Ground 7: Counsel rendered ineffective assistance by claiming her own ineffectiveness.

facts: On April 29, 2004 defendant counsel made an oral motion to withdraw as defendant counsel for his appeal, after the fact defendant was granted the right to appeal. Counsel stated to the Judge "that she was not federal experience and that she would like to have someone who was to take over the case".

Ground 8: Counsel rendered ineffective assistance for failure to investigate mitigating evidence against defendant.

facts: On February 3, 2004 the sentencing judge did an opinion on defendant's issues pertaining to his second and subsequent conviction under 924(c) for count 6 of the indictment. In the judge's opinion he stated that the government was using the trace amount of drugs found in the defendant wife place of business in connection with the firearm. The government was using the 497.81 grams but could not connect the drugs and the firearm together. Defendant counsel did not know that the government was using the residue found in the business until defendant notified her about the matter, counsel still did not raise the issue on appeal when the sentencing judge told her to appeal the matter. Trace Amount under 841(a) is not a drug trafficking crime, but a simple possession under 844(a) a simple possession which does not trigger the statute under 924(c).

AO 243 (Rev. 5/85)

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

None of the grounds were raised do to Counsel's poor performance, Counsel did not research case law properly.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing

*Connie Cooper P.O. Box 310
Phoenix City, AL 36868*

(b) At arraignment and plea

(c) At trial

(d) At sentencing

AO 243 (Rev. 5/85)

(e) On appeal ↑(f) In any post-conviction proceeding N/A(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☒ No ☐

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

Russell County Court House, Phenix City, AL 36868
Probation Violation

(b) Give date and length of the above sentence: 10 years Split Sentence 3 to Serve and
Mon probation, January 1999,

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☒ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Pro So

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

 (date)

Wendall Jefferson
 Signature of Movant